

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DOCKET NO. 05-30074-MAP

TAMMY WALKER,)
Plaintiff)
)
v.)
)
CITY OF HOLYOKE,)
Defendant)

**ANSWER OF THE DEFENDANT TO
PLAINTIFF'S AMENDED COMPLAINT**

FIRST DEFENSE

The plaintiff's amended complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The defendant, City of Holyoke, answers the plaintiff's amended complaint, paragraph by paragraph, as follows:

1. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of plaintiff's amended complaint.
2. The defendant admits the allegations contained in paragraph 2 of plaintiff's amended complaint.
3. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of plaintiff's amended complaint.
4. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of plaintiff's amended complaint.
5. The defendant admits the allegations contained in paragraph 5 of plaintiff's amended complaint.

6. The defendant admits the allegations contained in paragraph 6 of plaintiff's amended complaint.

7. The defendant admits the allegations contained in paragraph 7 of plaintiff's amended complaint.

8. The defendant admits the allegations contained in paragraph 8 of plaintiff's amended complaint.

9. The defendant admits the allegations contained in paragraph 9 of plaintiff's amended complaint. Further answering, the defendant states that the seniority date of June 9, 1999 was agreed to in error based on plaintiff's misrepresentation.

10. The defendant admits the allegations contained in paragraph 10 of plaintiff's amended complaint. Further answering, the defendant states that the seniority date of June 9, 1999 was agreed to in error based on plaintiff's misrepresentation.

11. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of plaintiff's amended complaint.

12. The defendant denies the allegations contained in paragraph 12 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

13. The defendant denies the allegations contained in paragraph 13 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

14. The defendant denies the allegations contained in paragraph 14 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

15. The defendant denies the allegations contained in paragraph 15 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

16. The defendant denies the allegations contained in paragraph 16 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

17. The defendant denies the allegations contained in paragraph 17 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

18. The defendant denies the allegations contained in paragraph 18 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

19. The defendant denies the allegations contained in paragraph 19 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

20. The defendant denies the allegations contained in paragraph 20 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

21. The defendant denies the allegations contained in paragraph 21 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

22. The defendant denies the allegations contained in paragraph 22 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

23. The defendant admits that the plaintiff spoke to Captain Fletcher about problems she thought she was having with other officers and that Captain Fletcher spoke to her about her incorrect seniority date. However, the defendant denies that Captain Fletcher ever confirmed that she was, in fact, having problems with other officers.

24. The defendant denies the allegations contained in paragraph 24 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

25. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of plaintiff's amended complaint.

26. The defendant denies the allegations contained in paragraph 26 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

27. The defendant denies the allegations contained in paragraph 27 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

28. The defendant denies the allegations contained in paragraph 28 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

29. The defendant denies the allegations contained in paragraph 29 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same. Further answering, the defendant states that the plaintiff was reprimanded because she violated the chain of command by submitting her report directly to the Chief instead of her immediate supervisor as she had been ordered to do.

30. The defendant admits the allegations contained in the first sentence of paragraph 30 of plaintiff's amended complaint. The defendant denies the allegations contained in the second and third sentences of paragraph 30 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

31. The defendant denies the allegations contained in paragraph 31 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

32. The defendant denies the allegations contained in the first sentence of paragraph 32 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same. The defendant admits that the plaintiff made the allegation contained in the second sentence of paragraph 32 of plaintiff's amended complaint.

33. The defendant denies the allegations contained in paragraph 33 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

34. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 of plaintiff's amended complaint.

35. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35 of plaintiff's amended complaint.

36. The defendant denies the allegations contained in paragraph 36 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

37. The defendant denies the allegations contained in paragraph 37 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

38. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of plaintiff's amended complaint.

39. The defendant denies the allegations contained in paragraph 39 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

40. The defendant admits the first sentence of paragraph 40 but states that there were additional reasons for the suspension, as well. The defendant admits the allegations contained in the second sentence of paragraph 40 of plaintiff's amended complaint.

41. The defendant admits the allegations contained in paragraph 41 of plaintiff's amended complaint. Further answering, the defendant denies that there was any retaliation.

42. The defendant admits that the plaintiff made the allegations contained in paragraph 42 of plaintiff's amended complaint. Further answering, the defendant denies that there was any retaliation.

43. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43 of plaintiff's amended complaint.

44. The defendant denies the allegations contained in paragraph 44 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

45. The defendant admits receiving correspondence from the plaintiff known as Exhibit A. The defendant denies the remaining allegations contained in paragraph 45 of plaintiff's amended complaint.

46. The defendant denies the allegations contained in paragraph 46 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

47. The defendant admits the allegations contained in the first sentence of paragraph 47 of plaintiff's amended complaint. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of paragraph 47 of plaintiff's complaint. Further answering, the defendant denies that the incident occurred as alleged.

48. The defendant denies the allegations contained in paragraph 48 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

49. The defendant denies the allegations contained in paragraph 49 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

50. The defendant admits the allegations contained in paragraph 50 of plaintiff's amended complaint. Further answering, the defendant denies the allegations contained in the complaint.

51. The defendant denies the allegations contained in paragraph 51 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

52. The defendant admits the allegations contained in paragraph 52 of plaintiff's amended complaint. Further answering, the defendant states that the plaintiff was not entitled to a continuance.

53. The defendant denies the allegations contained in the first sentence of paragraph 53 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same. The defendant admits the allegations contained in the second sentence of paragraph 53 of plaintiff's amended complaint. The defendant admits the allegations contained in the third sentence of

paragraph 53 of plaintiff's complaint. Further answering, the defendant states that plaintiff's termination had nothing to do with the filing of her complaint.

54. The defendant denies the allegations contained in paragraph 54 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

COUNT I

55. The defendant repeats and realleges its responses to paragraphs 1 through 54 of the plaintiff's amended complaint and incorporates the same by reference as if fully set forth herein.

56. The defendant denies the allegations contained in paragraph 56 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

57. The defendant denies the allegations contained in paragraph 57 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

58. The defendant denies the allegations contained in paragraph 58 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

COUNT II

59. The defendant repeats and realleges its responses to paragraphs 1 through 58 of the plaintiff's amended complaint and incorporates the same by reference as if fully set forth herein.

60. The defendant denies the allegations contained in paragraph 60 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

61. The defendant denies the allegations contained in paragraph 61 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

62. The defendant denies the allegations contained in paragraph 62 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

COUNT III

63. The defendant repeats and realleges its responses to paragraphs 1 through 62 of the plaintiff's amended complaint and incorporates the same by reference as if fully set forth herein.

64. The defendant denies the allegations contained in paragraph 64 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

65. The defendant denies the allegations contained in paragraph 65 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

66. The defendant denies the allegations contained in paragraph 66 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

COUNT IV

67. The defendant repeats and realleges its responses to paragraphs 1 through 66 of the plaintiff's amended complaint and incorporates the same by reference as if fully set forth herein.

68. The defendant denies the allegations contained in paragraph 68 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

69. The defendant denies the allegations contained in paragraph 69 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

70. The defendant denies the allegations contained in paragraph 70 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

COUNT V

71. The defendant repeats and realleges its responses to paragraphs 1 through 70 of the plaintiff's amended complaint and incorporates the same by reference as if fully set forth herein.

72. The defendant denies the allegations contained in paragraph 72 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

73. The defendant denies the allegations contained in paragraph 73 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

74. The defendant denies the allegations contained in paragraph 74 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

COUNT VI

75. The defendant repeats and realleges its responses to paragraphs 1 through 74 of the plaintiff's amended complaint and incorporates the same by reference as if fully set forth herein.

76. The defendant denies the allegations contained in paragraph 76 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

77. The defendant denies the allegations contained in paragraph 77 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

78. The defendant denies the allegations contained in paragraph 78 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

COUNT VII

79. The defendant repeats and realleges its responses to paragraphs 1 through 78 of the plaintiff's amended complaint and incorporates the same by reference as if fully set forth herein.

80. The defendant denies the allegations contained in paragraph 80 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

81. The defendant denies the allegations contained in paragraph 81 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

82. The defendant denies the allegations contained in paragraph 82 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

COUNT VIII

83. The defendant repeats and realleges its responses to paragraphs 1 through 82 of the plaintiff's amended complaint and incorporates the same by reference as if fully set forth herein.

84. The defendant denies the allegations contained in paragraph 84 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

85. The defendant denies the allegations contained in paragraph 85 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

86. The defendant denies the allegations contained in paragraph 86 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

COUNT IX

87. The defendant repeats and realleges its responses to paragraphs 1 through 86 of the plaintiff's amended complaint and incorporates the same by reference as if fully set forth herein.

88. The defendant denies the allegations contained in paragraph 88 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

89. The defendant denies the allegations contained in paragraph 89 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

90. The defendant denies the allegations contained in paragraph 90 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

COUNT X

91. The defendant repeats and realleges its responses to paragraphs 1 through 90 of the plaintiff's amended complaint and incorporates the same by reference as if fully set forth herein.

92. The defendant denies the allegations contained in paragraph 92 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

93. The defendant denies the allegations contained in paragraph 93 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

94. The defendant denies the allegations contained in paragraph 94 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

COUNT XI

95. The defendant repeats and realleges its responses to paragraphs 1 through 94 of the plaintiff's amended complaint and incorporates the same by reference as if fully set forth herein.

96. The defendant denies the allegations contained in paragraph 96 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

97. The defendant denies the allegations contained in paragraph 97 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

98. The defendant denies the allegations contained in paragraph 98 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

99. The defendant denies the allegations contained in paragraph 99 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

COUNT XII

100. The defendant repeats and realleges its responses to paragraphs 1 through 99 of the plaintiff's amended complaint and incorporates the same by reference as if fully set forth herein.

101. The defendant denies the allegations contained in paragraph 101 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

102. The defendant denies the allegations contained in paragraph 102 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

103. The defendant denies the allegations contained in paragraph 103 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

104. The defendant denies the allegations contained in paragraph 104 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

105. The defendant denies the allegations contained in paragraph 106 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

COUNT XIII

106. The defendant repeats and realleges its responses to paragraphs 1 through 105 of the plaintiff's amended complaint and incorporates the same by reference as if fully set forth herein.

107. The defendant denies the allegations contained in paragraph 107 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

108. The defendant denies the allegations contained in paragraph 108 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

109. The defendant denies the allegations contained in paragraph 109 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

110. The defendant denies the allegations contained in paragraph 110 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

COUNT XIV

111. The defendant repeats and realleges its responses to paragraphs 1 through 110 of the plaintiff's amended complaint and incorporates the same by reference as if fully set forth herein.

112. The defendant denies the allegations contained in paragraph 112 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

113. The defendant denies the allegations contained in paragraph 113 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

114. The defendant denies the allegations contained in paragraph 114 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

COUNT XV

115. The defendant repeats and realleges its responses to paragraphs 1 through 114 of the plaintiff's amended complaint and incorporates the same by reference as if fully set forth herein.

116. The defendant denies the allegations contained in paragraph 116 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

117. The defendant denies the allegations contained in paragraph 117 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

118. The defendant denies the allegations contained in paragraph 118 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

119. The defendant denies the allegations contained in paragraph 119 of the plaintiff's amended complaint and calls upon the plaintiff to prove the same.

THIRD DEFENSE

By way of affirmative defense, the defendant states that the plaintiff is estopped from recovering in this action by way of her own conduct.

FOURTH DEFENSE

By way of affirmative defense, the defendant states that it was justified in its conduct and acts and, therefore, the plaintiff cannot recover.

FIFTH DEFENSE

By way of affirmative defense, the defendant states that its acts and conduct were performed according to and protected by law and/or legal process and, therefore, the plaintiff cannot recover.

SIXTH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's claim for retaliation must fail because it was not subjected to adverse employment action or motive because of any protected activity.

SEVENTH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff cannot recover in this action since she was not qualified for the position she held due to her inappropriate conduct.

EIGHTH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's claims are barred since, at all times, the defendant acted in good faith.

NINTH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's discipline was for just cause and the plaintiff was disciplined in good faith and in compliance with M.G.L. c. 31.

TENTH DEFENSE

By way of affirmative defense, the defendant states the plaintiff's claim must fail because she has not opposed any practice made an unlawful employment practice.

ELEVENTH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff cannot recover under her harassment claim in which she alleges hostile work environment because she cannot show a pattern of harassment that is so severe and pervasive that it alters the conditions of her employment and creates an abusive work environment.

TWELFTH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff cannot prove that the defendant's actions were motivated by discriminatory animus.

THIRTEENTH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff is unable to recover in this action since there was just cause to support the suspensions given to the plaintiff.

FOURTEENTH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff cannot recover punitive damages against the defendant since there is no evidence that the defendant engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the plaintiff's rights.

FIFTEENTH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's claim must fail because she was not subjected to harassment, either through words or actions, based on her gender, race or sexual orientation.

SIXTEENTH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's claim must fail because she was not subjected to harassment that had the affect of unreasonably interfering with her work performance and did not create an objectively intimidating, hostile or offensive work environment.

SEVENTEENTH DEFENSE

By way of affirmative defense, the defendant states that the defendant's conduct was justified in theory and practice by a legitimate bona fide interest and no alternative course of action could have been adopted that would have enabled that interest to be served with less discriminatory impact.

EIGHTEENTH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's claims must fail since the defendant's decisions and actions were based on legitimate non-discriminatory reasons.

NINETEENTH DEFENSE

By way of affirmative defense, the defendant states that plaintiff's First Amendment claim must fail since the plaintiff's expression does not involve matters of public concern, but only internal department issues or matters that solely affect the plaintiff.

TWENTIETH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's First Amendment claim must fail since the interest of the defendant in promoting the efficiency of the public

services it performs through its employees outweighs the potential interest of the plaintiff to speak out on matters which would incite anger and resentment.

TWENTY-FIRST DEFENSE

By way of affirmative defense, the plaintiff's claim must fail since significant First Amendment interests are not involved.

TWENTY-SECOND DEFENSE

By way of affirmative defense, the plaintiff's claim must fail since the defendant was, at all times, advancing significant and legitimate municipal interests and the incidental restriction on the plaintiff's alleged First Amendment freedoms is no greater than is essential to the furtherance of those interests.

TWENTY-THIRD DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's claim for alleged violation of her right to free expression must fail since she did not have a right to make false claims.

TWENTY-FOURTH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's claim for alleged violation of her right to free expression must fail since plaintiff's expression did not involve a matter of public concern.

TWENTY-FIFTH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's claim for retaliation must fail because she was not subjected to adverse employment action or motives because of any protected activity.

TWENTY-SIXTH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's retaliation claim must fail since there is no proximity to the date of the plaintiff's alleged protected conduct and the disciplinary action taken against the plaintiff.

TWENTY-SEVENTH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's claims of retaliation must fail since the actions taken by the defendant were based on legitimate business reasons and the alleged acts of retaliation have no proximity to the plaintiff's alleged protected conduct.

TWENTY-EIGHTH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's claim for harassment must fail because the defendant took adequate steps to investigate and/or remedy all situations of which the plaintiff complained and the investigation showed plaintiff's claims to be unfounded.

TWENTY-NINTH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff has failed to bring her claims within the appropriate statutes of limitations.

THIRTIETH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's claim, pursuant to Title VII, must fail since she failed to initiate this action within ninety days of receipt of the Right to Sue notice.

THIRTY-FIRST DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's alleged damages shall be limited pursuant to 42 U.S.C. § 1981 a(b)(3).

THIRTY-SECOND DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's claim must fail because the plaintiff was not disciplined contrary to a well-defined public policy in that the plaintiff's conduct was not statutorily protected or mandated.

THIRTY-THIRD DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's whistle blower protection claim must fail because the plaintiff has failed to satisfy the requirements of M.G.L. c. 149, § 185.

THIRTY-FOURTH DEFENSE

By way of affirmative defense, the defendant states the plaintiff's claim under M.G.L. c. 149 must fail since the defendant did not take any retaliatory action against the plaintiff.

THIRTY-FIFTH DEFENSE

By way of affirmative defense, the defendant states that plaintiff's claim, pursuant to M.G.L. c. 149, is without basis in law or in fact and, therefore, the defendant will pursue reasonable attorney's fees and court costs.

THIRTY-SIXTH DEFENSE

By way of affirmative defense, the defendant states that any actions taken by the defendant in connection with the allegations in this complaint were justified and required by considerations of public health, safety, and welfare.

THIRTY-SEVENTH DEFENSE

By way of affirmative defense, the defendant states that its actions and conduct were reasonable under the circumstances.

THIRTY-EIGHTH DEFENSE

By way of affirmative defense, the defendant states that there is no evidence that defendant's conduct was extreme or outrageous.

THIRTY-NINTH DEFENSE

By way of affirmative defense, the defendant states that its acts and conduct were performed according to and protected by law and/or legal process and, therefore, the plaintiff cannot recover.

FORTIETH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff is unable to recover since the defendant had no ulterior or illegitimate purpose.

FORTY-FIRST DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's claim is barred since there is no evidence that the defendant acted recklessly or with callous indifference to the plaintiff's rights.

FORTY-SECOND DEFENSE

By way of affirmative defense, the defendant states the alleged actions of the defendant were not calculated to cause damage to the plaintiff.

FORTY-THIRD DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's claims must fail since the defendant's actions, at all times, were required in the interest of the public and the means used by the defendant were reasonably necessary for the accomplishment of this purpose and not unduly oppressive upon the plaintiff.

FORTY-FOURTH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's claims must fail since the defendant's actions were not arbitrary, unreasonable, capricious or irrational.

FORTY-FIFTH DEFENSE

By way of affirmative defense, the defendant states that if the plaintiff suffered injuries or damages, as alleged, such injuries or damages were caused by someone or something for whose conduct the defendant was not and is not legally responsible.

FORTY-SIXTH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff is not entitled to recover because of her failure to mitigate damages.

FORTY-SEVENTH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff is not entitled to punitive damages.

FORTY-EIGHTH DEFENSE

By way of affirmative defense, the defendant says that the plaintiff's claims are frivolous and not made in good faith, and the defendant, therefore, demands their costs and attorneys' fees pursuant to G.L. c. 231, § 6F and/or F.R.C.P. 11.

FORTY-NINTH DEFENSE

By way of affirmative defense, the defendant states that it is immune from liability for damages for any violation of the plaintiff's civil rights under federal or state law since its conduct at all relevant times was in good faith, without malice and not in disregard of settled principles of constitutional law.

FIFTIETH DEFENSE

By way of affirmative defense, the defendant states that it cannot be held liable for violating the plaintiff's civil rights since no official or unofficial policy, ordinance, regulation, custom or practice or decision resulted in a deprivation of plaintiff's constitutional rights.

FIFTY-FIRST DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's claim must fail since it did not deprive the plaintiff of constitutional or statutory rights by threat, intimidation, coercion or interference and the defendant cannot be a party to such an action under M.G.L. c. 151B, §4(4A).

FIFTY-SECOND DEFENSE

By way of affirmative defense, the defendant states that the plaintiff has failed to allege any facts of a material nature which rise to the level of constitutional deprivations under 42 U.S.C. §1983.

FIFTY-THIRD DEFENSE

By way of affirmative defense, the defendant states that a civil rights action against the City of Holyoke must fail since it cannot be held liable under the respondeat superior doctrine and the plaintiff has failed to show that the City of Holyoke caused the alleged constitutional violation.

FIFTY-FOURTH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff has failed to set forth an actionable claim, pursuant to 42 U.S.C. §1983 against the City of Holyoke since the plaintiff is unable to establish that there was a deliberate indifference to the rights of its inhabitants or that the alleged deficiency is related to the plaintiff's alleged injuries.

FIFTY-FIFTH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's retaliation claims must fail since they were not a part of the original MCAD and EEOC claims and plaintiff's proposed amendment to add the retaliation claims was never approved.

FIFTY-SIXTH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's civil rights claim must fail since M.G.L. c. 151B and Title VII provide the exclusive remedy for employment related discrimination and harassment claims.

FIFTY-SEVENTH DEFENSE

By way of affirmative defense, the defendant states that plaintiff's claims must fail since she was not treated less favorably because she is a member of a protected class.

FIFTY-EIGHTH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff has failed to satisfy the statutory requirements and conditions precedent necessary to maintain this action.

FIFTY-NINTH DEFENSE

By way of affirmative defense, the defendant states that by filing an action under M.G.L. c. 149, Section 185, the plaintiff has waived any rights and remedies available to her as set forth in Section 185(f).

SIXTIETH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's claim must fail since there is no evidence that the defendant knew or should have known of the alleged harassment committed upon the plaintiff by a subordinate or co-employee of the plaintiff.

SIXTY-FIRST DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's claim must fail since there has been no abuse of power, invidious discrimination, or fundamentally unfair procedures or unjustified disparate treatment with respect to similarly situated persons.

SIXTY-SECOND DEFENSE

By way of affirmative defense, the defendant states that by filing a claim under c. 149, plaintiff has waived all rights and remedies available to her under statutory and common law arising out of the retaliation action. M.G.L. c. 149, §185F.

SIXTY-THIRD DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's claim that she was terminated in violation of the first amendment must fail because the defendant would have reached the same decision even in the absence of the protected conduct.


SIXTY-FOURTH DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's claim that she was terminated in violation of the first amendment must fail because she cannot establish that her speech was a substantial or motivating factor in the decision to terminate her.

JURY CLAIM

THE DEFENDANT CLAIMS A TRIAL BY JURY.

The Defendant,
City of Holyoke
By Their Attorneys
Morrison Mahoney LLP



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I hereby certify that a true copy of the
above document was served upon (each
party appearing pro se and) the attorney
of record for each (other) party by mail
(by hand) on 11/3/04
